

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 5/14/2020
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- against -

DAMIR PEJGINOVIC,

Defendant.

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VICTOR MARRERO, United States District Judge.

By letters mailed March 30, 2020 and April 22, 2020, defendant Damir Pejcinovic ("Pejcinovic") requests that the Court order his release. (See "March 30 and April 22 Letters."¹) The Court construes Pejcinovic's letters as a motion for temporary release on bail from the Metropolitan Detention Center ("MDC") pursuant to 18 U.S.C. Section 3142(i) ("Section 3142(i)"). For the reasons explained below, the Court denies Pejcinovic's request.

Section 3142(i) provides that a court may "permit the temporary release of [a pretrial defendant], in the custody of a United States marshal or another appropriate person, to the extent that the judicial officer determines such release to be necessary for preparation of the person's defense or for another compelling reason." Section 3142(i). "A 'compelling reason' may . . . exist where a defendant's serious medical condition warrants release." United States

¹ Because the March 30 and April 22 Letters contain sensitive health information, the Court will file the letters under seal.

v. Gumora, No. 20 CR 144, 2020 WL 1862361, at *4 (S.D.N.Y. Apr. 14, 2020) (citations omitted). "In considering whether there is a compelling reason for a defendant's release under this provision, however, a court must balance the reasons advanced for such release against the risks that were previously identified and resulted in an order of detention." United States v. Chambers, No. 20 CR 135, 2020 WL 1530746, at *1 (S.D.N.Y. Mar. 31, 2020) (internal quotation marks omitted).

Pejcinovic does not argue that temporary release is necessary for preparation of his defense. Nor does he argue that he has a condition that renders him at a high risk of suffering serious illness from COVID-19. Rather, Pejcinovic asserts that the Court should order his release so that he can aid in the fight against COVID-19 by donating his antibodies. Pejcinovic also reports that he is experiencing uncontrollable seizures, sleep disruption, and stress.

At Pejcinovic's initial bail hearing, the magistrate judge identified numerous reasons for detention, including: the strong weight of evidence against Pejcinovic; that Pejcinovic would be subject to a lengthy period of incarceration if convicted; Pejcinovic's prior criminal history; his history of violence; a lack of stable employment; his significant family ties outside the United

States; his recent international travel; that he was currently in the process of removal proceedings; his prior use of aliases; his prior failure to appear in court as ordered; his prior violations of probation, parole, or supervised release; his recent violation of an order of protection; the nature of the crime charged, including use of sophisticated equipment that could also be used to evade monitoring by pre-trial services; and the potential availability of financial resources that could be used to evade monitoring by pre-trial services. (See Order of Detention Pending Trial, Dkt. No. 17; Initial Appearance Transcript, Dkt. No. 27, at 26:1-27:13.) The magistrate judge explained that, in the recent past:

[Pejcinovic] w[as] arrested and charged with . . . a violent felony offense for a domestic incident and . . . pled guilty to assault with intent to cause physical injury. And in connection with that charge, a bench warrant was issued. And then [Pejcinovic] later pled guilty to violating an order of protection against [him] and to bail jumping.

(Initial Appearance Transcript, Dkt. No. 27, at 26:21-27:2.)

The Court concludes that Pejcinovic has not provided a sufficiently compelling reason for temporary release given the significant evidence that he remains a flight risk. Considering Pejcinovic's past non-compliance with bail conditions and court orders, the substantial sentence he

may face if convicted in this case, his international contacts and prior international travel, that he is currently in the process of removal proceedings, and the complications that this pandemic presents for pretrial supervision, the Court is persuaded that releasing Pejcinovic from the MDC would present a serious risk of flight. Pejcinovic's prior offenses also indicate his dangerousness to the community and weigh against his release. See United States v. Jackson, 823 F.2d 4, 7 (2d Cir. 1987).

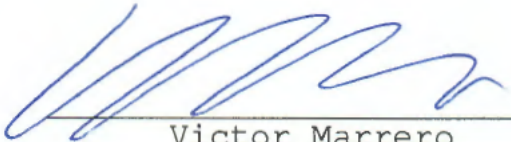
The Court is mindful that the current pandemic poses a substantial threat to the health of inmates with serious medical conditions across the country, and that this threat may present a compelling reason warranting certain defendants' temporary release on bail. However, numerous courts have nevertheless denied bail to defendants with underlying health conditions where the risks that justified the defendants' initial detention continued to outweigh the risks that continued incarceration might pose for the defendants' health. See, e.g., Chambers, 2020 WL 15300746, at *1 (denying bail to defendant with asthma); United States v. Hamilton, No. 19 CR 54, 2020 WL 1323036, at *1-2 (E.D.N.Y. Mar. 20, 2020) (denying bail to defendant with history of stroke and heart attack). On the particular

facts of this case, the Court is not persuaded that Pejcinovic's health conditions amount to a compelling reason justifying his release in light of the many considerations reflecting that he remains both a danger and a flight risk.

Accordingly, for the reasons discussed above, it is hereby **ORDERED** that the motion so deemed by the Court as filed by defendant Damir Pejcinovic for temporary release on bail pursuant to 18 U.S.C. Section 3142(i) is **DENIED**. Counsel for the Defendant is directed to mail this order to the Defendant.

SO ORDERED.

Dated: New York, New York
14 May 2020



Victor Marrero
U.S.D.J.